

PETROVEST, INC.

IBLA 83-521

Decided October 19, 1983

Appeal from decision of the Alaska State Office, Bureau of Land Management, partially suspending oil and gas lease offer AA 48135.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Generally

Where public domain land is reserved for a particular use by another agency, BLM should properly consider the recommendations of the surface managing agency regarding lease issuance, but this does not relieve BLM of the need to determine independently whether a lease may issue in the public interest.

APPEARANCES: George S. Haymans, President, Petrovest, Inc.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Petrovest, Inc., appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM). The decision suspended a 5-acre portion of appellant's noncompetitive oil and gas lease offer, AA 48135. The decision stated that it could not issue a lease for this portion, a radio relay site, AA 12951, without the concurrence of the surface managing agency, the Corps of Engineers, Department of the Army. 1/ BLM did issue a lease for the lands in the remainder of the offer, approximately 4,475 acres in T. 22 S., R. 12 E., Fairbanks meridian.

Appellant objects to the creation of island acreage and offers to accept a stipulation not to drill on the 5-acre tract.

The Corps of Engineers inquired of the Air Force and forwarded this response of the Department of the Air Force to the leasing of this and another radio relay site.

1/ According to the historical index for this township, the U.S. Air Force filed a withdrawal application for this site on Jan. 30, 1976. Appellant filed its oil and gas lease application on Sept. 23, 1982.

The Department of the Air Force has advised this office that they object to oil and gas leasing at these sites for the following reasons: The sites are currently leased to Alascom, Inc., under terms of Air Force Lease No. F23613-76-L-001 and the Air Force has made a commitment to sell both sites, including the land, to Alascom under the provisions of 40 USC 771 et seq. ^{2/} Once this sale is consummated, the sites will become private property. In the interim, the Air Force interests in the sites must be protected. Functions at the site are significant in that they provide long distance communications to the Air Force, the Army and other defense agencies as well as some civilian populations in Alaska. It is crucial that operation of the sites continue without disruption or impairment effected by oil and gas leasing activities. Also, land at the site comprises about five acres each, and because they are situated on the tops of high knolls they are not conducive to oil or gas leasing. In addition, the site access roads cannot be used for heavy equipment travel because they are not extensively maintained nor were they constructed to accommodate heavy traffic.

Further, it is required that for so long as Paxson and McCallum Radio Relay Sites remain Government property that any oil or gas leasing activity in areas around the sites which may tend to disrupt site operation or site access must be concurred upon by both the Alaskan Air Command and Alascom, Inc.

[1] Public lands are available for leasing, at the discretion of the Secretary of the Interior, exercised through BLM, under the provisions of the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976). Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 625 (D.C. Cir. 1960). Accordingly, the Secretary has the authority to refuse to lease lands for oil and gas or to impose stipulations even if the lands have not been withdrawn from the operation of the mineral leasing laws.

A decision not to lease land must be supported by facts of record that the action is required in the public interest. Ted C. Findeiss, 65 IBLA 210 (1982). Where an offer to lease public domain land is refused in deference to the purposes of another agency or agencies, BLM should properly consider the recommendation of that agency or agencies regarding lease issuance or stipulations. Western Interstate Energy, Inc., 71 IBLA 19 (1983). With respect to public domain lands, however, BLM needs to make an independent

^{2/} The Alaska Communications Disposal Act, 40 U.S.C. §§ 771-792 (1976), authorizes the transfer of Government-owned communications facilities in and to Alaska.

determination supported by the record as to whether, and under what conditions, a lease may issue in the public interest. ^{3/}

The record here supports the BLM decision. The case record shows evidence of specific consultation with the Department of Defense on the question of oil and gas leasing at this site. The site is currently in use as a long-distance communications facility and has been targeted for transfer pursuant to 40 U.S.C. § 781 (1976). The decision below correctly suspended the application as to the 5 acres involved. See Mobil Oil Corp., 20 IBLA 296 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Gail M. Frazier
Administrative Judge

^{3/} This is distinguished from leasing under the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), which precludes mineral leasing of acquired lands by the Secretary of the Interior without the consent of the administering agency. See Amoco Production Co., 69 IBLA 279, 281 (1982).

